

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

In the matter of:	)	
	)	
Creation of a Low Power Radio Service	)	MM Docket No. 99-25
	)	

**REPLY COMMENTS OF COMMON FREQUENCY**

May 20, 2012

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## I. INTRODUCTION

Common Frequency, Inc. (“CFI”), a nonprofit 501(c)(3) California corporation that advocates for, assists, and educates new community, student, and alternative non-commercial educational applicants submits this reply comment concerning the *Fourth Further Notice of Proposed Rulemaking* concerning MM Dockets 99-25 (“NPRM”).

## II. REPLY REGARDING COMMENTS OF NATIONAL PUBLIC RADIO, INC.

National Public Radio, Inc (“NPR”), opens their comment to the FCC by stressing that the Local Community Radio Act (“LCRA”)<sup>1</sup> was “carefully crafted” with “detailed provisions” that have been “years in the making”.<sup>2</sup> One would assume with such description that the act would be explicit in directive. However, NPR digresses into quoting Congressional dialog concerning the creation of the LCRA rather than dissecting the LCRA’s “detailed provisions.” Our interpretation is that NPR could find nothing within the act to support their assertions.

**A. NPR objects to a LP-250 service; CFI disagrees:** At the heart of *Part I* of their comment, NPR objects to the creation of a new 250-watt LPFM service.<sup>3</sup> Again, we stress NPR does not quote or interpret any part of the LCRA directly to rebut the Commission’s proposal to allow such a service. Instead, NPR relies on non-specific dialog within Congressional records that simply reference individuals providing non-technical recitals of then-current LPFM rules. NPR appears to believe that Congress’ past interpretation of LPFM should act a blanket limitation on any future modification LPFM rules. NPR appears to be asserting that any mere description to Congress about

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<sup>1</sup> H.R. 6533 (111th): Local Community Radio Act of 2010.

<sup>2</sup> Page 2, NPR Comment.

<sup>3</sup> *Ibid.*

an issue being legislated freezes that issue from any other jurisdictional modification. For example, consider if Congress enacted a law to make all stop signs the color red. Also consider that within that hypothetical Congressional record it was explained to Congress that stop signs are usually hung at 7 feet high, although the new law does not stipulate that. Along the same argument line, NPR might assert that since Congress interpreted stop signs to be hung at 7 feet high that U.S. cities cannot hang stop signs at 8 feet high—even though the law only stipulates stop signs be red. This is not a logical argument.

NPR continues, quoting, “LPFM radio services . . . must operate at less than 100 watts”, which is not true, as LPFM can operate at 100 watts. But regardless, NPR should understand that manuscripts, discussions, etc emanating from the Senate or House of Representatives do not translate to enforceable law unless passed by three the chambers of government. If this was not the case, one could imagine the discussions in court regarding analysis of inane Congressional dialog in order to interpret laws.

The fact remains that the LCRA does not contain any language limiting LPFM wattage or broadcast radius. Although the LCRA does state the spacings cannot be reduced between LP-100 and full power services, this does not encroach upon the FCC’s jurisdictional right to stipulate different antenna patterns, wattages, and antenna heights. The FCC can rightfully exercise any modification of these implements as long as they are confident that a full power station’s protected contour area is not encroached upon by a low power service.

NPR also states “250 watt LPFM stations are also unnecessary because the Commission already licenses Class A full power stations to operate with the same

effective radiated power (“EAP”) [sic].” NPR may not realize the minimum facility of a full power FM station is 100 watts at 30 meters HAAT, the same as a currently permitted LPFM services.

**B. NPR objects lifting I.F. for proposed LPFM services under 100 watts; CFI**

**disagrees:** NPR states “Congress specifically addressed the licensing of LPFM stations and gave no indication of an intent for the Commission to eliminate the obligation of LPFM stations to afford IF interference protection.” NPR asserts that there is an unwritten rule that says the FCC cannot lift I.F. spacing rules unless Congress specifies. The LCRA does not specify anywhere that I.F. spacing cannot be lifted.

NPR also states, “Commission should assess the interference consequences of exempting FM translator stations from the IF protection obligation in the roughly 20 years since the exemption was adopted.” We assert that if I.F. interference was a problem, the FCC would have investigated it by now. Since many translators under 100 watts currently reside within I.F. spacing zones, the rules already stipulate pragmatic interference remediation protocols to remedy such situations on a piecemeal basis.

**C. NPR insists that second-adjacent waivers should only be granted if fully-spaced channels are not available; CFI disagrees:**

NPR states “The Commission therefore should only grant a second adjacent waiver if there are no other fully spaced channels available to the applicant.” This rationale runs counter to Section 5 of the LCRA. As stated previously in our comment on this docket, allowing an applicant the option to pursue a second-adjacent channel only if no fully-space channels runs contrary to the underlying predetermination of “adequate spectrum availability” within the proposed spectrum-available/spectrum-limited model. Within this plan, the FCC

reserves X amount of channels per market—which counts second-adjacent channels—for LPFM via mandate of the LCRA. If any one of those channels is a fully-space channel, NPR’s model would prevent prospective LPFM applicants from using other second-adjacent channels that were reserved for LPFM use by the FCC. Case in point: Consider there is one fully spaced channel and there are eight second-adjacent channels open in a city. Then consider that dozens of LPFM applicants would only be allowed to apply for that one fully spaced channel because no applicants would be able to apply for the eight second-adjacent channels, regardless of technical considerations. NPR’s stipulation thus prevents LPFM applicants from using the channels reserved for them under the FCC’s channel-balancing regimen. Those channels would be locked-out of LPFM applicant reach, thereby reserved for the next translator filing window.

**D. NPR insinuates 250-watt services are not low-power in nature; CFI disagrees.**

NPR attempts to differentiate 100-watt and 250-watt services via rhetorical dissection.<sup>4</sup>

NPR’s claim is that only a 100-watt service is truly low power in nature:

Even where the Commission is purporting to adopt rule changes not required to implement the LCRA, it should maintain the LPFM service true to its foundational principles as Congress understood them: a service of low powered broadcasting, providing access to broadcast facilities at modest cost and highly local service to the LPFM licensee’s community.<sup>5</sup>

Asserting 100 watts is low power and 250 watts is not is not supported by any distinct definition:

- 1) LP-100 covers a 3.5 mile radius, while LP-250 proposes to cover a 4.5 mile radius. NPR believes an extra mile exempts a low power service from being

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<sup>4</sup> NPR Comment Page 8.

<sup>5</sup> NPR Comment Page 10.

“highly local”. We believe this is arbitrary. NPR also puzzlingly recites from the Congressional record that LPFM has a “broadcast radius of approximately three to five miles” [underlining added for emphasis],<sup>6</sup> arguing against their point. The proposed LP-250 watt service actually has a broadcast radius of less than five miles, which means LP-250 falls under what has previously been described as “low power” to Congress.

- 2) NPR appears to insinuate that a 100-watt service has “modest cost” but a 250-watt service may not. The difference between the two operations is merely the transmitter size. We priced a 100-watt FM transmitter to be \$2325, and a 300-watt transmitter to be \$2925.<sup>7</sup> NPR quotes that a LPFM facility “can be constructed for less than fifty thousand dollars.”<sup>8</sup> The price difference between the 100-watt and 250-watt transmitters within the \$50,000 budget is less than 1.3% of that budget using the quotes we received above. CFI views this as insignificant.
- 3) Translators and LPFM service are characterized as secondary services, both low power in nature. Translators are already allowed greater coverage than LPFM service.<sup>9</sup> It would be arbitrary to allow translators superior coverage while limiting LPFM service while the LCRA places them on equal footing.<sup>10</sup>

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<sup>6</sup> NPR Comment Page 9.

<sup>7</sup> See [www.progressive-concepts.com](http://www.progressive-concepts.com), pricing for BW Broadcast 150 watt and 300 watt transmitters as of May 20, 2012.

<sup>8</sup> NPR Comment Page 10.

<sup>9</sup> Section 74.1235 allow translators to be 250 watts at 32 m, and 250 watts at 107 m outside of zone I-A and west of the Mississippi. Fill-in translators may cover far more area and relay HD-2 services.

<sup>10</sup> Congress mandated ensuring spectrum for LPFM (by Title of Section 5), with Section 5(3) stating the services be equal. We interpret this as implying the overall goal of equal spectrum for each service.

### **III. REPLY REGARDING COMMENTS OF NATIONAL ASSOCIATION OF BROADCASTERS**

National Association of Broadcasters (“NAB”) states that second-adjacent waivers should only be utilized in rare circumstances. They are emphatic regarding that notion—“the LCRA generally prohibits LPFM operations on second-adjacent channels”, “waiver should be granted only under extremely limited circumstances and in rare instances”.<sup>11</sup> It is our opinion that the degree of waiver scarcity they are requesting is based upon opinion and not Congressional mandate. The entire waiver process defined within the LCRA, included below:

#### **(2) WAIVER-**

(A) IN GENERAL- Notwithstanding paragraph (1), the Federal Communications Commission may grant a waiver of the second-adjacent channel distance separation requirement to low-power FM stations that establish, using methods of predicting interference taking into account all relevant factors, including terrain-sensitive propagation models, that their proposed operations will not result in interference to any authorized radio service.

#### **(B) REQUIREMENTS-**

(i) SUSPENSION- Any low-power FM station that receives a waiver under subparagraph (A) shall be required to suspend operation immediately upon notification by the Federal Communications Commission that it is causing interference to the reception of an existing or modified full-service FM station without regard to the location of the station receiving interference.

(ii) ELIMINATION OF INTERFERENCE- A low-power FM station described in clause (i) shall not resume operation until such interference has been eliminated or it can demonstrate to the Federal Communications Commission that the interference was not due to emissions from the low-power FM station, except that such station may make short test transmissions during the period of suspended operation to check the efficacy of remedial measures.

(iii) NOTIFICATION- Upon receipt of a complaint of interference from a low-power FM station operating pursuant to a waiver authorized under subparagraph (A), the Federal Communications Commission shall notify the identified low-power FM station by telephone or other electronic communication within 1 business day.

Notice Congress does not stipulate any limiting requirements to the extent that NAB has prescribed. Furthermore, it would be unprecedented to create additional, non-essential

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<sup>11</sup> See NAB comment page 5.

limiting criteria for second-adjacent LPFM waivers while similar less-stringent protocols are required for licensing translator services. The real-world broadcast implementation of both services is indistinguishable outside of regulation. Therefore, the key limiting factor is identical to translator service: the “proposed operations will not result in interference to any authorized radio service”.<sup>12</sup> This has been already sufficiently addressed in translator service proposal by applicants demonstrating a zero population U/D showing.

NAB further goes on to characterize LPFM operators as “relatively inexperienced”, having “greater difficulties predicting and/or resolving interference problems” with “lack of resources and limited experience”.<sup>13</sup> We believe this is an unfair characterization of LPFM operators. In fact, many translator licensees operate translators from hundreds of miles away on limited budgets. In contrast, a local LPFM operator might be easier to work with concerning remediation because of their immediacy and willingness to actively participate in what is likely the only facility they operate.

#### **IV. REPLY TO OTHER COMMENTERS**

##### **A. Regarding comments of du Treil, Lundin & Rackley, Inc.(“dLR”):** dLR

recommends LP-10 service be eliminated.<sup>14</sup> Although their assertion that LP-10 is not spectrally efficient may hold weight, in practice the nullification of LP-10 could introduce a secondary-service licensing imbalance that is in conflict with the LCRA Section 5. Section 5 states that licenses should be “available to FM translator stations, FM booster stations, and low-power FM stations” with “such decisions...made based on the needs of

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<sup>12</sup> LCRA Sec 3(b)(2)(A).

<sup>13</sup> NAB Comment Page 11.

<sup>14</sup> dLR Comment Page 4.



the local community.” The Section also stresses by its title about “ensuring availability” while all three services “remain equal in status”.

There are select communities that cannot accommodate LP-100 service, but can accommodate translator and LP-10 service. With a cancellation of LP-10 service, the FCC might be inadvertently insinuating that A) spectrum area will be open to translator service but barred from LPFM service, B) that licensing decision would be made by the FCC and not the local community, and C) availability of LPFM will not be ensured. We believe deleting LP-10 service for these situations could violate the terms of Congressional mandate.

If the FCC believes LP-10 is short of being a viable service, it has the authority to make it a viable service. Just as the FCC proposed LP-250, it could re-tool LP-10 with extra height or wattage as long as the spacings in Section 73.807 are not reduced and the interference buffer zone is not exceeded. Certain LPFM advocates are thus proposing “LP-50” as a fix. But also consider translator operators actively utilize 10 watt services. In fact 43% of the pending translator applications proposed within 60 km of New York City are proposed at or below 10 watts. Since LP-100 service is not available in New York City, but LP-10 can fit, it would be ironic for the FCC to cancel LP-10 only to proceed with licensing 10-watt translators.<sup>15</sup>

**B. Regarding comments of Brown Broadcast Services, Inc. (“BBSI”):** BBSI points out that translator service still has technical superiority over LPFM even if LP-250 is approved; we have the same concern regarding this issue. As the FCC maintains the

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<sup>15</sup> Regarding New York City LP-10 availability, see Letter To FCC from Common Frequency, Re: LPFM and Translator Processing, December 27, 2011 (available in FCC ECFS). Also noted that 10-watt translator service is allowed to be proposed at much higher HAAT than LP-10.

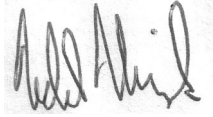
rationale to balance the number of LPFM and translator facilities in communities to achieve parity in accord with Section 5 of the LCMA, this balancing act might lose meaning if translators are allowed to cover much more area.

Translators west of the Mississippi and outside Zone I-A are allowed up to 250 watts at 107 meters. Although this coverage exceeds the buffer zone within the proposed LP-250 spacing chart, we might suggest an augmented LP-250 service waiver. In such areas to the west of the Mississippi/outside Zone I-A, a LPFM waiver could be sought to allow coverage of up to 13.3 km provided that the LPFM applicant could demonstrate (A) the minimum spacing in Section 73.807 is met, and (B) that a contour showing is provided adhering to rules specified in Section 74.1204. This exception may prove to be useful in rural areas in the west where sparse population exists over a large area.

CFI is also concerned about the growing number of commercial stations feeding monster-sized fill-in translators with HD-2 signals. We believe the Commission should limit fill-in translators for analog-relayed fill-in only, and ban the use of HD-2-relayed services in this specific case. Such usage is only creating full-power-coverage-like commercial stations in markets, inflating the price of secondary service channels for entities that need them for purposes stated within the rules.

\* \* \* \*

Respectfully Submitted by,

A handwritten signature in black ink, appearing to read "Todd Urick", written over a light gray rectangular background.

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